

**CV 15 - 0158**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

John Dellago,

Plaintiff,

v.

New York State Catholic Health Plan, Inc.,  
d/b/a Fidelis Care New York; and DOES 1-10,  
inclusive,

Defendants.

Civil Action No.: \_\_\_\_\_

**COMPLAINT**

GLEESON, J.

REYES, M.J.

For this Complaint, the Plaintiff, John Dellago, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of the Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

3. The Plaintiff, John Dellago ("Plaintiff"), is an adult individual residing in Rocky Point, New York, and is a "person" as defined by 47 U.S.C. § 153(39).

4. Defendant New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York ("New"), is a New York business entity with an address of 95-25 Queens Boulevard Rego Park, New York 11374, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Does 1-10 (the "Agents") are individual agents employed by Fidelis Care and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as parties once their identities are disclosed through discovery.

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6. Fidelis Care at all times acted by and through one or more of the Agents.

**FACTS**

7. In or around February 2014, Fidelis Care began calling Plaintiff's cellular telephone number 631-XXX-3071.

8. Fidelis Care called Plaintiff using an automated telephone dialing system ("ATDS") and an artificial or prerecorded voice.

9. When Plaintiff answered calls from Fidelis Care he heard a prerecorded message instructing Plaintiff to press "1" if he was "Anita" or press "2" if he was not.

10. In the course of several calls from Fidelis Care Plaintiff pressed "2" to indicate he was not "Anita" in the hopes Fidelis Care calls would stop.

11. Plaintiff never provided his cellular telephone number to Fidelis Care and never provided his consent to be called by Fidelis Care.

12. In or around July 2014, Plaintiff told a representative from Fidelis Care that they were calling the wrong number and requested that Fidelis Care stop calling.

13. During the aforementioned call, a representative from Fidelis Care told Plaintiff they would make a note that they were calling the wrong number.

14. Nevertheless, Fidelis Care continued to make autodialed calls to Plaintiff's cellular telephone number.

**COUNT I**

**VIOLATIONS OF THE TCPA –**  
**47 U.S.C. § 227, et seq.**

15. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

16. At all times mentioned herein and within the last four years, Defendants called Plaintiff on his cellular telephone using an automatic telephone dialing system ("ATDS") and a prerecorded or artificial voice.

17. Plaintiff never provided his cellular telephone number to Defendants and never provided his consent to be called by Defendants.

18. Despite being directing to cease all calls, Defendants continued to place automatic telephone calls to Plaintiff's cellular telephone. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

19. The telephone number called by Defendants was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

20. The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

21. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

22. Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each call made in knowing and/or willful violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

#### **PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);

2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and

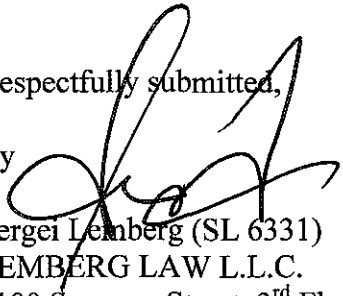
3. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: January 5, 2015

Respectfully submitted,

By



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